

A. G. Contract No. KR06-0182TRN  
ADOT ECS File: JPA 05-135  
Project: HES-ORV-0(009)P  
SH281 01C  
Section: Calle Concordia, Town of Oro  
Valley, Oracle Road to Calle Buena Vista  
Construct Safety Improvements

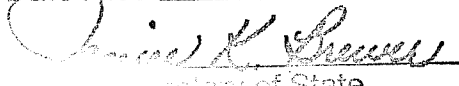

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE TOWN OF ORO VALLEY

THIS AGREEMENT is entered into 7th of April, 2006, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, Intermodal Transportation Division (the "State") and the TOWN OF ORO VALLEY acting by and through its MAYOR and TOWN COUNCIL (the "Town").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The Town is empowered by Arizona Revised Statutes Section 9-240 and 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.
3. Congress has authorized appropriations for, but not limited to, the design of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
4. Such project lies within the boundary of the Town has been selected by the Town; the survey of the project has been completed; and the plans, estimates and specification swill be prepared and as required submitted to the State and the Federal Highway Administration ("FHWA") for approval.
5. The Town, in order to obtain Federal Funds for the construction of the project, is willing to provide Town funds to match Federal Funds in the ratio required or as finally fixed and determined by the Town and FHWA, including actual construction engineering and administration costs (CE).
6. The interest of the State in the project, is in the acquisition of expended Federal Funds for the use and benefit of the Town and to authorize such Federal Funds for the project by Federal law and regulations.

NO. 28157  
Filed with the Secretary of State  
Date Filed: 4-7-06  
  
Secretary of State  
By: 

6. The estimated project costs for construction safety improvements to Calle Concordia in the Town of Oro Valley from Oracle Road to Calle Buena Vista.

Estimated Federal Funds at 94.3% for Construction Cost	\$485,645.00
Estimated Matched Funds from Town at 5.7%	<u>\$ 29,355.00</u>
* Estimated Construction Costs for the Project ( <b>SH281 01C</b> )	\$515,000.00
*(Includes 15% CE and 5% project contingencies)	

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

### **1. The State Shall:**

a. Submit a program to the Federal Highway Administration (FHWA) containing the above mentioned Project with the recommendation that it be approved for construction.

b. Construct the Project approved by FHWA, if such funds are available for construction. Be the designated authorized agent for the Town and proceed to advertise for, receive and open bids with the aid and consent of the Town and the FHWA. Enter into a contract(s) with a firm(s) to whom the award is made for the construction of the project. Such project is to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the Town and the Standard Specifications for Road and Bridge construction of the Arizona Department of Transportation.

c. Enter into a Project Agreement with FHWA on behalf of the Town covering the work encompassed in said construction contract and will request the maximum Federal Funds available, including construction engineering and administration costs. Should costs exceed the maximum Federal Funds available, it is understood and agreed that the Town will be responsible for any overage.

d. Reimburse the Town with Federal Funds for construction work addressed under this Agreement at 94.3% of the project cost.

e. Not be obligated to maintain said Project, should the Town fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

### **2. The Town Shall:**

a. If such project is approved for construction by FHWA and the funds are available for construction, hereby designate the State as authorized agent for the Town.

b. Agree to deposit funds with the State in the amount determined to be necessary to match Federal Funds in the ratio required for the estimated construction costs of the Project.

c. Be responsible for all costs incurred by the State in performing and accomplishing the work as set forth in this Agreement whether covered by Federal Funding or not.

d. Be obligated to incur the cost increase of said work due to unforeseen conditions or circumstances required by a change in the extent or scope of the work called for by the Town, in this Agreement; any such changes require the prior approval of the State.

e. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, and hereby certifies that all obstructions and encroachments have been or will be removed from there prior to the start of construction.

f. Not permit or allow any encroachments upon or private use of, except those authorized by permit, of the right-of-way. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use.

g. Upon completion of right-of-way acquisition, provide the State with a temporary construction easement (TCE) for the Project.

h. Provide for cost and, as an annual item in the Town's budget, proper maintenance of the Project including all of the Project components.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this Agreement in association with the Project work requested by the Town and provided herein. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the Town and that to the extent permitted by law, the Town hereby agrees to save, hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or reasonable attorneys' fees.

2. This Agreement shall remain in force and effect until completion of the work and related deposits or reimbursements.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:


Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

Town of Oro Valley  
Town Manager  
11000 N. La Canada Drive  
Oro Valley, AZ 85737

8. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**TOWN OF ORO VALLEY**

By   
PAUL LOOMIS  
Mayor

**STATE OF ARIZONA**

Department of Transportation

By   
SUSAN TELLEZ  
ECS Contract Administrator

**ATTEST**

By   
KATHRYN CUVELIER  
Town Clerk

05-135-SH 281-01C-Pass through  
Calle Concordia-Oracle to Calle Buena Vist

**RESOLUTION NO. (R) 06- 06**

**A RESOLUTION OF THE TOWN OF ORO VALLEY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT ("IGA") WITH THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION TO CONSTRUCT SAFETY IMPROVEMENTS ON CALLE CONCORDIA FROM ORACLE ROAD TO CALLE BUENA VISTA, PROJECT NO. OV 30 00/01 20.**

**WHEREAS**, the Town of Oro Valley, pursuant to Arizona Revised Statute §11-951 *et seq.*, is authorized to enter into intergovernmental agreements for joint and cooperative action with other public entities; and

**WHEREAS**, the State of Arizona, Department of Transportation and the Town of Oro Valley wish to enter into an Intergovernmental Agreement to construct safety improvements on Calle Concordia from Oracle Road to Calle Buena Vista.; and

**WHEREAS**, the Town will design, construct and provide maintenance and operational responsibilities for that portion of Calle Concordia; and

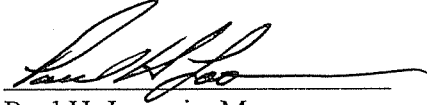
**WHEREAS**, it is in the best interest of the Town of Oro Valley to enter into an Intergovernmental Agreement, attached hereto as Exhibit "A", with the State of Arizona, Department of Transportation and that Mayor and Council of the Town of Oro Valley is authorized to approve such Agreement.

**THEREFORE, BE IT RESOLVED, BY THE MAYOR AND THE TOWN COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA:**

1. That the Mayor and other appropriate administrative officials of the Town of Oro Valley are hereby authorized to take such steps as are necessary to execute and implement the terms of the Intergovernmental Agreement.

**PASSED AND ADOPTED** by the Mayor and Town Council of the Town of Oro Valley, Arizona this 22 day of **FEBRUARY** 2006.

**TOWN OF ORO VALLEY, ARIZONA**

  
Paul H. Loomis, Mayor

ATTEST:

Kathryn E. Cuvelier  
Kathryn E. Cuvelier, Town Clerk

2-24-06  
Date

APPROVED AS TO FORM:

Melinda Garrahan  
Melinda Garrahan, Town Attorney

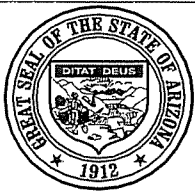
2-24-06  
Date

ATTORNEY APPROVAL FORM  
FOR THE TOWN OF ORO VALLEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF ORO VALLEY, an agreement among public agencies, which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954, and declares this agreement to be in proper form and within the powers and authority granted to the TOWN under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 14<sup>th</sup> day of March, 2006.

  
Attorney

<p>TERRY GODDARD Attorney General</p>	<div data-bbox="743 52 938 241"></div> <p>OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR06-0182TRN (**JPA 05-135**), an Agreement between public agencies, i.e., The State of Arizona and The Town of Oro Valley, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: March 28, 2006

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:953605  
Attachment